



Ninety-Seventh Legislature - Second Session - 2002
Committee Statement
LB 916

Hearing Date: January 22, 2002

Committee On: Agriculture

Introducer(s): (Dierks)

Title: Change food regulation provisions

Roll Call Vote – Final Committee Action:

- X Advanced to General File
- Advanced to General File with Amendments
- Indefinitely Postponed

Vote Results:

5	Yes	Senators Burling, Dierks, Schimek, Schrock, Vrtiska
0	No	
2	Present, not voting	Senators Cunningham, Erdman
1	Absent	Senator Chambers

Proponents:

Senator Cap Dierks, #40
Merlyn Carlson
George H. Hanssen
Mark Lutz
Kathy Siefken

Representing:

Introducer
Nebraska Department of Agriculture
Nebraska Department of Agriculture
Nebraska Restaurant Association
Nebraska Grocery Industry Association

Opponents:

Carey Potter

Representing:

Nebraska Retail Federation

Neutral:

Representing:

Summary of purpose and/or changes:

LB 916 is brought at the request of the Department of Agriculture to update provisions of the Nebraska Pure Food Act and to extend sanitation and quality requirements of the Graded Egg Act to smaller egg producers that are currently excluded . The bill adopts by reference the 1999 Food Code, a publication of the Food and Drug Administration of the U.S. Public Health Service except those

provisions that are excluded by 81-2,244.01 as amended by section 4 of the bill. Provisions that are excluded are largely replicated in either existing sections of the Nebraska Pure Food Act or new sections added by LB 916. The Food Code provides a set of model standards for sanitation, storage and presentation of food at retail food establishments that states and localities may utilize as regulatory standards governing food establishments. The Food Code is revised every two years to keep pace with advancements in knowledge in the prevention of food borne illnesses and regulatory experience. The current Nebraska Pure Food Act incorporates provisions of the 1995 Food Code. Finally, the bill revises inspection fees charged under the act as explained in the section-by-section summary.

The most significant substantive changes to current law include the following:

1. Food establishments would be required to sell potentially hazardous food stored at 45⁰ within 4 days rather than 10 days under current law. Food held at 41⁰ may be kept for 7 days before sale. This provision is found in section 23 of the bill. It replaces 3-202.11 of the Food Code which is excluded from adoption by reference. Section 23 is substantially the same except the Food Code requires all food to be held at 41 degrees. The modification as set out in Section 23 would allow a time for food establishments in Nebraska to transition to new coolers.
2. The definition of food establishments is modified to include some establishments that are currently exempt which sell only prepackaged snack foods defined under section 6 of the bill to include foods with low health or safety risks.
3. The definition of food establishment is further amended to provide that persons selling food that is not potentially hazardous at a farmers market would not be regulated so long as the customer is notified that the food was prepared in an uninspected kitchen.
4. The bill would require that any food establishment, except temporary establishments and mobile food units, to have permanent running water and a toilet facility located in the same building.

SECTION BY SECTION ANALYSIS

Section 1: Modifies the Graded Egg Act so that egg handlers with less than 3,000 hens would only be exempted from the fee and license requirements of the act rather than all of the requirements of the act. The purpose of this change is to require smaller egg producers to comply with sanitation and quality requirements of the act in order to protect consumers.

Sections 2&3: Include new sections in the Nebraska Pure Food Act and definitions.

Section 4: Updates the adopted version of the FDA Food Code to the 1999 version and modifies which code sections are excluded from adoption by reference as follows:

- Includes sections of the 1999 Food Code to which certain provisions of the 1995 Food Code that are adopted by reference in the Nebraska Pure Food Act were transferred to maintain the same requirements, [1-201.10(B)(2), 1-201.10(B)(3), (53), (54), (68) and (69), and 4-301.12(E)].
- The 1999 Food Code modified the requirements for sick food employees so that the person in charge of a food establishment is only required to notify the regulatory authority when an employee is diagnosed with Salmonella, Shigella, E. coli, and hepatitis A, rather than requiring them to do so even when the employee is only suspected of having one of these illnesses as is currently required in §81-2,272.07 of the act. Code section numbers

had to be modified in the bill to adopt this change [2-201, 2-201.11, 2-201.12, 2-201.13, 2-201.14]. Section 81-2,272.07 is outright repealed.

- The 1999 Food Code changed some code sections so that they are now similar to current requirements of the act, so they do not need to be excluded [2-402.11, 3-201.14, 3-304.16, 3-403.11].
- The 1999 Food Code Section that would conflict with section 19 of the bill is excluded [2-302.11(B)].
- Sections of the 1995 Food Code that no longer exist are excluded [2-301.13, 3-201.17(D), 3-401.11(A)(4), 3-401.15, 5-203.15, 6-301.11(B)].
- A new Section of the 1999 Food Code that would require whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory be obtained from a processing plant that labels the meat to indicate it meets the definition of whole-muscle, intact beef was excluded because processing plants do not currently label meat in this manner [3-201.11(E)].
- The 1999 Food Code section that would conflict with section 23 of the bill is excluded [3-202.11(A)].
- Certain provisions of the 1999 Food Code are added to the list of excluded sections because they refer to other code sections that are excluded [3-302.11(B)(4), 3-304.17, 3-401.11(C)(2) and (D)(2), 3-701.11(C), 4-204.111, 4-802.11(C)].
- The 1999 Food Code Section that would conflict with section 20 of the bill is excluded [3-304.13].
- Excludes a new 1999 Food Code section that requires a sanitizer level indicating device for warewashing machines that does not work [4-204.117].
- The 1999 Food Code Sections that would conflict with sections 17 and 18 of the bill are excluded [5-103.12, 5-104.11, 5-104.12, 5-203.12, 6-302.10].

Section 5: Modifies the definition of food establishment so that:

- Not all types of food which is prepackaged and not potentially hazardous could be sold without being regulated under the act. Establishments would be regulated unless they only sold prepackaged snack foods as defined in section 6 of the bill.
- Persons selling food which is not potentially hazardous at a farmers market would not be regulated so long as the consumer knows that the food was prepared in an uninspected kitchen. The Board recommended this type of exemption.

Section 6: Defines snack food to include foods with low health and safety risks. Included are soft drinks, candy, gum, chips, pretzels, cheese puffs, crackers, nuts, seeds, cookies, cakes and pastries. The Board recommended this type of definition.

- Section 7: Cleans up modified section numbers and adds subdivision (4) of section 21 of the bill as a critical violation because that is how the toilet requirement in the FDA Food Code is designated.
- Section 8: Changes the permit and inspection fees so that as of July 1, 2003, the director will set permit and inspection fees according to statutory guidelines. The legislated cash fund appropriation for the act would be the basis for the level of cash funds expended for activities under the act. The cash fee revenue could not be greater than 107% of the cash fund appropriation. The projected fiscal year end cash fund balance could not be greater than 17% of the cash fund appropriation. Statutory caps on the fees provide the upper limit that fees are not to exceed. The caps were set to represent a potential 26% increase across the board from the current fees. Any established fee increases or decreases would have to be equally allocated between all categories of food establishments. Once an approximate 17% reserve is reached, future fee increases would parallel legislated cash fund appropriation changes. .
- Section 9: Modifies the requirements for hand sanitizing solutions based on the products that are currently available.
- Secs 10-13: Adopts the general concept of the 1999 FDA Food Code for cold holding temperatures. Currently, potentially hazardous food may be kept at 45°F for 10 days. FDA recommends that such food should only be kept at 45°F if it will be consumed within 4 days. If potentially hazardous food is to be held longer, it must be held at 41°F.
- Secs 14&15: Modifies consumption dates listed on foods and discard dates, based on the new temperature and length of holding food requirements. Foods held at 41°F may now only be held for 7 days.
- Section 16: Modifies temperature for holding oxygen reduced food to 41°F.
- Section 17: Sets out water facility requirements for temporary food establishments. This section follows the 1999 FDA Food Code requirements, but was excluded from adoption by reference because the sections in the code made references to requirements for non-temporary establishments which conflicted with section 21 of the bill.
- Section 18: Requires any food establishment, except temporary establishments and mobile food units, to have permanent running water and a toilet facility located in the same building for employees.
- Section 19: Specifies that most food handlers cannot wear fingernail polish or artificial fingernails, but wait and host staff may have such fingernails if they only minimally have contact with food or equipment.
- Section 20: Specifies that linens should only contact food such as raw dough prior to being baked and food in a linen lined container for service.
- Section 21: Specifies that food which may have been contaminated by someone with a contagious illness must be discarded. This follows FDA recommendations but could not be adopted by reference because the code section referred to an excluded code section.

Section 22: Sets temperature requirements for vending machines to be in line with hot and cold holding temperature requirements of the Food Code.

Section 23: Specifies that potentially hazardous food may be received at 45°F if it is to be consumed within 24 hours. Otherwise food should be received at 41°F.

Secs 24&25: Repealers

Explanation of amendments, if any:

Senator Merton L. Dierks, Chairperson